

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, June 8, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Walter Schmidt

SECRETARY TO THE BOARD: Peggy S. Pelikan

OTHERS PRESENT: Town of Merton Board of Adjustment
Russ & Kathy Wambold, BA05:010, neighbor
Lou Hernandez, BA05:028, petitioner
Dan Maloney, BA05:036, petitioner
Scott Susek, BA05:030, petitioner
Jay Jacques, BA05:034, petitioner
Dale Bergman, BA05:030, neighbor
Russ Thatcher, BA05:030, neighbor
Mark Brue, BA05:030, neighbor
T.R. Minerath, BA05:030, neighbor
Paul Dross, BA05:030, neighbor
Ken Kaestner, BA05:030, neighbor
Al Gagliano, BA05:010, petitioner
Jim Samuels, BA05:010, petitioner
Matt Heaton, BA05:036 and BA05:039, architect
Joe Sorrentino, BA05:038, petitioner
Nish Patel, BA05:039, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of May 25, 2005, with the following language to be added to the Other Items Requiring Board Action:*

“The Board discussed in detail the proposed Board of Adjustment Procedures. Robyn Schuchardt, Corporation Counsel, is going to make revisions to the Procedures and submit them to the Board at a

later date for their review and possible adoption.”

The motion was seconded by Mr. Ward and carried unanimously.

NEW BUSINESS:

BA05:010 AL & CINDY GAGLIANO - OWNERS
J.G. Samuels, Inc. – Petitioner/Builder

Mr. Schultz *I move to approve the request in accordance with the conditions recommended in the Addendum to the Staff Report, for the reasons set forth in the Addendum to the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The new residence and attached garage must be substantially in conformance with the plans submitted to the Planning and Zoning Division staff on May 26, 2005.
2. The new residence, as measured to the outer edges of the walls, must be at least 75 ft. from the natural shoreline on the west (lake) side of the island, but the corners of the attached garage may encroach slightly into that 75 ft. shore setback area, as indicated on the plans submitted to the Planning and Zoning Division on May 26, 2005.
3. Any decks, patios, covered porches, and “covered gardens” must also be at least 75 ft. from the natural shoreline on the west (lake) side of the island.
4. The overhangs of the new residence and attached garage, not including the covered porches and the “covered garden” shown on the plans submitted to the Planning and Zoning Division on May 26, 2005, shall be no more than two (2) ft. wide.
5. The new residence and attached garage must be at least 45 ft. from the shoreline on the channel side (north and east sides), as measured to the outer edges of the walls, but proposed decorative pillars on the east side of the structure may extend closer than 45 ft. to the channel.
6. The first floor elevation of the new residence and the attached garage must be at or above 823.1 ft. above mean sea level (two feet above the 100-year flood elevation).
7. The new residence may not have a full basement. If it is constructed on a crawl space, the floor of the crawl space must be at or above 821.1 ft. above mean sea level (the 100-year flood elevation).
8. Prior to the issuance of a Zoning Permit, a complete set of plans for the new residence, including all appurtenances, in conformance with the above conditions, must be submitted to the Planning

and Zoning Division staff for review and approval.

9. Prior to the issuance of a Zoning Permit, a Plat of Survey with the staked-out location of the proposed residence, attached garage, and all appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
10. Upon completion of the foundation of the new residence, certification shall be obtained from a registered land surveyor that the floor elevation is in conformance with the above conditions. A copy of that certification must be submitted to the Town of Eagle Building Inspector and to the Planning and Zoning Division staff, prior to proceeding with construction.
11. The finished grades in the areas within 15 ft. of the new residence and attached garage shall be at least 822.1 ft. above mean sea level (one foot above the 100-year flood elevation).
12. In order to ensure compliance with the above conditions, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, and an erosion and sediment control plan. This grading plan may be combined with the Plat of Survey required in Condition No. 9.
13. If the grading to be done in conjunction with the proposed construction will exceed 10,000 sq. ft., a Chapter 30 Permit must be obtained from the State of Wisconsin Department of Natural Resources, and a copy of that Chapter 30 Permit must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
14. If modifications to the existing access bridge are proposed, a Chapter 30 Bridge Permit must be obtained from the State of Wisconsin Department of Natural Resources, and a copy of that Chapter 30 Bridge Permit must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
15. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
16. All existing buildings must be removed from the property, prior to the issuance of a Zoning Permit for the new residence.
17. The fenced storage area on the property must be eliminated.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The property has physical limitations because it is an island and a hardship exists with respect to conformance with the shore and floodplain setback requirements because the width of the island (approximately 165 ft. at the widest point) makes it impossible to locate a residence in conformance with the required 75 ft. shore and floodplain setback from both the lake and the channel.

The proposed residence and attached garage has been designed to be in substantial conformance with the building envelope recommended by the Planning and Zoning Division staff and the DNR and to maximize the shore setback. The proposed residence and attached garage will not adversely affect the lake and is not contrary to the public interest. Further, the revised plans will result in the complete removal of the existing extremely non-conforming residence, as well as the non-conforming storage shed and detached garage. Therefore, the approval of shore and floodplain setback variances to permit the construction of a new residence and attached garage, as conditioned, is in conformance with the purpose and intent of the Ordinance.

BA05:036 DAN MALONEY

Mr. Schmidt

I move to deny the request as recommended in the Staff Report, for the reasons set forth in the Staff Report.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioners would be permitted to construct a 943 sq. ft. detached garage on the subject property without the need for a special exception from the accessory building floor area ratio requirements of the Ordinance. A second level would be permitted on the garage if it would be accessed by a pull-down staircase only. Therefore, the approval of this request would not be within the purpose and intent of the Ordinance.

BA05:038 JOE SORRENTINO

Mr. Bartholomew

I move to approve the request in accordance with the conditions recommended in the Staff Report, for the reasons set forth in the Staff Report.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The dimensions of the second floor addition shall not be any larger than the existing first floor of the residence, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs are no larger than the dimensions of the existing residence.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The existing residence on the property does not meet the minimum requirement of 1,100 sq. ft.; with the proposed addition the residence will comply with this requirement. The petitioners would not be able to comply with this requirement without the need for floor area ratio and open space variances. Furthermore, the petitioners cannot comply with the open space requirements of the Ordinance because the property itself is less than 15,000 sq. ft. in size. The second floor addition will be no closer to the east lot line than the existing residence and therefore will not have an adverse affect on neighboring properties. The approval of this request, as recommended, is not contrary to the public interest and therefore, is in conformance with the purpose and intent of the Ordinance.

BA05:039 NISH & LINDA PATEL

Mr. Tarmann *I move to approve the request in accordance with the conditions recommended in the Staff Report, for the reasons set forth in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed addition must be no closer to the south lot line than the existing residence, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the addition must be located so that the outer edges of the overhangs conform with the offset/setback requirements.
2. The proposed patio shall be located no closer to the lot lines than the existing residence.
3. The proposed addition, patio, and retaining wall must adhere to the shore and floodplain setback requirements of the Ordinance.
4. Approval must be received from the Waukesha County Park and Planning Commission for the retaining wall within 5 ft. of the property line or the retaining wall must be relocated to a minimum of 5 ft. from the property line.

5. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed addition, patio, and retaining wall, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. A detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed addition, patio and retaining wall does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The existing residence conforms to all of the locational requirements of the Ordinance except for offset. Due to the narrowness of the lot, it would be nearly impossible for a new residence to be constructed to meet the offset requirements. The proposed addition, deck, and patio will be no closer to the lot lines than the existing residence. The approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:030 SCOTT SUSEK

Mr. Schmidt

I move to approve the request in accordance with the conditions recommended in the Staff Report, for the reasons set forth in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried with four yes votes, Mr. Tarmann voted no.

The staff's recommendation was for denial of the request for a variance from the floor area ratio requirements, denial of the request for variances from the shore setback and boathouse requirements, and approval of the request for a variance from the offset and open space requirements, with the following conditions:

1. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

2. The proposed residence must be located at least 7 ft. from the side lot line, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the offset requirements.
3. No boathouse is permitted.
4. The proposed residence and attached garage must conform with the floor area ratio requirements of the Ordinance.
5. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage and any appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 6.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioners will be able to use the property for a permitted use without the proposed boathouse. The residence will have an attached garage and a full basement for storage. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Without the proposed boathouse, the proposed residence conforms with the floor area ratio requirements of the Ordinance, and therefore there is no need for a variance to be granted from that provision of the Ordinance.

Due to the narrowness of the lot, the petitioner would not be able to construct the proposed residence in the proposed location and have a building envelope of at least 30 ft. wide. As conditioned, the new residence will maintain a 7 ft. offset, which is the minimum allowed if the property were served by municipal sewer. In addition, the proposed residence will be further from the shore and floodplain than the existing residence on the lot. With the residence and attached garage the open space on the property will only be slightly less than the requirement. Furthermore, the approval of this request will eliminate four non-conforming structures from the property. Therefore, the approval of the request for variances from the offset and open space requirements of the Ordinance for the proposed residence is not contrary to the public interest and will be in conformance with the purpose and intent of the Ordinance.

BA05:034 JAY & KATHERINE JACQUES – OWNERS
Paul Schultz - Petitioner

It should be noted that Mr. Schultz excused himself from the Board of Adjustment meeting prior to the deliberation in this case because he was serving as the petitioner. He was not in the boardroom during the deliberation portion of the meeting.

Mr. Bartholomew *I move to approve the request in accordance with the conditions recommended in the Staff Report, for the reasons set forth in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed additions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division Staff for review and approval.
2. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division Staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The proposed additions would not pose a safety hazard or interfere with the public's use of the minor dead-end road that does not extend beyond the subject property. It would be unnecessarily burdensome to deny the requested variance to remodel a non-conforming structure in excess of 50% of its fair market value. The existing residence has only a slightly non-conforming road setback and is in conformance with all other locational requirements of the Ordinance. The approval of this request would not be contrary to the public interest. Therefore, the approval of this request is within the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA05:028 LUIS HERNANDEZ

Mr. Bartholomew *I move to approve to reaffirm the previous decision made by the Board on May 25, 2005.*

The motion was seconded by Mr. Schultz and carried unanimously.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 8:50 p.m.*

The motion was seconded by Mr. Schmidt and carried unanimously.

Respectfully submitted,

Peggy S. Pelikan
Secretary, Board of Adjustment